

IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

EMILIO ROMERO,	:	JURY TRIAL DEMANDED
Plaintiff	:	
	:	NO: 3:19-CV-01038-JFS
	:	
vs.	:	
	:	
TOBYHANNA TOWNSHIP, PA;	:	
MOUNT POCONO BOROUGH;	:	
COOLBAUGH TOWNSHIP;	:	
BARRETT TOWNSHIP;	:	
CHIEF OF POLICE CHRIS WAGNER;	:	
DETECTIVE LUCAS BRAY;	:	
DETECTIVE MARK WEBBE, &	:	
ASSISTANT DISTRICT ATTORNEY;	:	
MICHAEL RACKACZEWSKI;	:	

**PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT'S MOTION  
TO STRIKE PLAINTIFF'S STATEMENT OF FACTS WHICH  
ESTABLISH GENUINE ISSUE OF MATERIAL FACT**

The Plaintiff, Emilio Romero, by and through his attorney, Earl Raynor, hereby files the within Brief in Opposition to Defendant's Motion to Strke Statement of Facts.

**STANDARD OF REVIEW**

Local Rule 56.1 of the United States District Court for the Middle District of Pennsylvania states that:

A motion for summary judgment filed pursuant to Fed.R.Civ.P. 56, shall be accompanied by a separate short and concise statement of the facts, in numbered paragraphs, as to which the moving party contends there is no genuine issue to be tried. The papers opposing a motion for summary judgment shall include a separate, short and concise statement of the material facts, responding to the numbered paragraphs set forth in the statement required in the foregoing paragraph, as to which it is contended that there exists a genuine issue to be tried. Statements of material facts in support of or in opposition to, a motion shall include parts of the record that support the statements. All material facts set forth in the statement to required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party. **M.D. Pa. LR 56.1 (2010) (emphasis added).**

#### **STATEMENT OF THE CASE**

On June 19, 2019, the Plaintiff filed a civil rights complaint, alleging malicious prosecution against the above captioned defendants. (Doc 1). On December 9, 2019, Plaintiff filed an amended complaint. (Doc. 40). Defendants filed a motion for summary judgment, with accompanying

statement of facts on October 29, 2020 and October 30, 2020, respectively. (Doc. 64) & (Doc. 66).

On December 21, 2020 Plaintiff filed a supplemental statement of facts, followed by a brief in opposition to Defendants' summary judgment the following motion the following day, December 22, 2020. (Doc. 75) (Doc. 76) (Doc. 77) & (Doc. 78). (Doc 80).

On December 30, 2020, Defendant Townships, Detective Lucas Bray and Chief Chris Wagner filed a Motion to Strike Plaintiff's Supplemental Statement of Facts. (Doc. 84). On December 31, 2020, Defendants Webbe and Rackaczewski filed an answer to Defendant's Supplemental Statement of Facts.

### **ARGUMENT**

Defendants' Motion to Strike Statement of Facts asserts that Plaintiff's Supplemental Statement of Facts "were incapable of intelligent response," because they were not numbered, did not have citation made numerous inflammatory assertions and drew legal conclusions.

Although it is true that Plaintiff's supplemental statement of facts were not numbered, it is untrue that the facts were unsupported by citations, as most

of the fact were gleaned from direct testimony proffered in Plaintiff's criminal jury trial, deposition, as well as court documents, all of which were attached for review by the court. Each of the paragraphs attested to facts and none of them drew legal conclusion. That Defendants assert that the statement of facts were unintelligible and could not be responded to is completely belied by the fact that Defendants Rackaczewski and Webbe fully responded to Plaintiff's statement of facts. However, the undersigned counsel understands and regrets his error in not numbering the paragraphs, and accordingly attaches with this brief, a revised statement of facts which is numbered. Defendants can in no way assert any prejudice for the undersigned counsel's failure to number the paragraphs, when the content of the statement of facts has not changed one iota.

Accordingly, for the foregoing reasons, Plaintiff respectfully requests that this Honorable Court deny Defendant's motion to strike Plaintiff's supplemental statement of facts.

Respectfully submitted:

/s/ Earl Raynor

Earl Raynor, Esquire  
PA Supreme Court I.D. No. 66849  
1800 JFK Boulevard  
Third Floor, Box 103  
Philadelphia, PA 19103  
(215)254-0299  
Fax: (914)663-5116  
[earlraynor@yahoo.com](mailto:earlraynor@yahoo.com)

Counsel for Plaintiff  
Emilio Romero